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Idaho Dev't v. Teton View Golf Estates Clerks' Record v. 8 Dckt. 37771

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LAW CLERK

IN THE

Supplemental volume 1 of 1

SUPREME COURT

OF THE

STATE OF IDAHO

IDAHO DEVELOPMENT, LLC

Plaintiff and

Appellant

SEE AUGMENTATION RECORD

ROTHCHILD PROPERTIES, LLC,

Defendants and

Respondents

Appealed from the District Court of the Seventh JudicialDistrict of the State of Idaho, in and for Bonneville CountyHon. Jon J. Shindurling, District JudgeAlan R. Harrison497 N. Capital Avenue, Suite 210 Idaho Falls, ID 83402

Attorney for Appellant

Karl R. DeckerP.O. Box 50130 Idaho Falls, ID 83405-0130

Attorney for Respondent

Filed this 29 day of NOV 2010

NOV 29 2010

By

37771

20

Clerk

Deputy

COPY

Supreme Court Court of Appeals
Entered on 11/29/10

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO DEVELOPMENT, LLC
a Utah Limited Liability Company

Plaintiff/Appellant

v

TETON GOLF ESTATES

**SUPPLEMENTAL
CLERK'S RECORD ON APPEAL**

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE Jon J. Shindurling, District Judge.

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Attorneys for Respondents

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Shindler

BONNEVILLE COUNTY

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SEP 12 2008

ATTORNEY FOR DEPATCO, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

IDAHO DEVELOPMENT, LLC., a)
Utah limited liability)
company,)

Plaintiff,)

v.)

TETON VIEW GOLF ESTATES, LLC.,)
a Utah limited liability)
company, ROTHCHILD PROPERTIES,)
LLC., a Utah limited liability)
company, WESTERN EQUITY, LLC.,)
A Utah limited liability)
company, AMERITITLE COMPANY;)
ZBS, LLC., an Idaho limited)
liability company, DEPATCO,)
INC., an Idaho corporation,)
SCHIESS & ASSOCIATES, P.C., an)
Idaho Professional Service)
Corporation, HD SUPPLY)
WATERWORKS, LTD., DOES 1-3,)
and ALL PERSONS IN POSSESSION)
OF REAL PROPERTY DESCRIBED)
HEREIN,)

Defendants.)

Case No. CV-08-4395

**DEPATCO'S BRIEF IN OPPOSITION
TO PLAINTIFF'S MOTION TO
RECONSIDER**

COMES NOW the Defendant, DePatco, Inc., hereafter "DePatco", and submits the following Reply Brief in Opposition to Plaintiff's Motion to Reconsider.

FACTS

On April 2, 2010, this Court entered its Memorandum Decision granting DePatco's Motion for Partial Summary Judgment and re-characterizing Idaho Development's alleged loan to Teton View as a capital contribution. The Court examined holdings in numerous State and Federal Courts and compared those holdings to Idaho Supreme Court rulings in *Weyerhoueser Co. v. Clark's Medical Supply Co.*, 90 Idaho 455, 413 P.2d, 180 (1966), *Lettunich v. Lettunich*, 141 Idaho 425, (2005), and *Vreeken v. Lockwood Engineering, B.V.*, 148 Idaho 89, 218 P.3d 1150 (2009). After reviewing these cases, the Court held that the Idaho Supreme Court shares the Third Circuit's view that a common sense approach is preferable to a multi-factor test, but that the Idaho Supreme Court also heavily considers the objective form of the transaction. This Court's decision then addressed the undisputed facts set forth in transactional documents which argue that the parties intended to advance a loan and documentation which contains elements of an equity investment. The Court considered the Affidavits of the respective parties and the documentation containing elements of both a loan and an equity investment and

held that the undisputed facts established "the subjective and objective intent of the parties demonstrates that Idaho [Development] sought to be both an investor in and a creditor to Teton View. The problem arises because there is no clear differentiation between the money agreed to be paid back and the money meant to serve as capital for the new entity; they are one and same." Order on DePatco's Motion for Partial Summary Judgment, p. 13.

After examining the objective form of the initial transaction, as established by the Joint Venture Agreement dated February 28, 2008, the Court found that there is no material issue of fact that Idaho Development's "investment" constituted a capital contribution. It is undisputed that this was the only capital contribution made to Teton View. After examination of all the documents, and the failure of the transactional documents to differentiate between what money served as a capital contribution and what money was intended solely as a traditional loan, the Court found that no differentiation existed and the Court therefore inferred that Idaho Development's entire advance to Teton View was a capital contribution and should be subordinated to the claims of Teton View's legitimate creditors. Order on DePatco's Motion for Partial Summary Judgment, p. 14.

Idaho Development now seeks a reconsideration of the Court's

DEPATCO'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER - 3

Order and submits additional evidence in support of reconsideration. Such additional evidence includes the Affidavit of Melinda Boswell to which are attached bank records from Key Bank and a proposed budget for Teton View Golf Estates. Ms. Boswell also testifies as to interest payments and late fees she received during 2008 from Teton View. This is not "new" evidence, as these factual allegations were considered by the Court in its original Order. Order at p. 14.

Idaho Development also submits the Affidavit of David Clark to which are attached his phone records for July, 2008. To clarify a prior Affidavit, Mr. Clark asserts that he talked with DePatco on July 30, 2008, rather than July 18 or 19, 2008, as he previously testified. Mr. Clark adds no additional evidence except with regard to the timing of this single phone call. These factual allegations do "not affect the nature of the advance at the time it was made." See Order, p. 14. No actual new evidence was submitted for Idaho Development in support of its Motion for Reconsideration.

STANDARD

On a Motion for Reconsideration, where the prior specification of facts is deemed established pursuant to IRCP 56(d), the Trial Court should reconsider those facts in light of any new or additional facts that are submitted in support of the

Motion. The burden is on the moving party to bring the Trial Court's attention to the new facts, and the Trial Court is not required to search the record to determine if there is any new information that might change the specification of facts deemed to be established. *Coeur d' Alene Mining Co. v. First Nat'l Bank*, 118 Idaho 812, 800 P.2d 1026 (1990). The party making a Motion for Reconsideration under Rule 11(a)(2) is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006).

DePatco incorporates the standard on Motion for Summary Judgment set forth in DePatco's previous briefing. Under normal Summary Judgment procedures, the Trial Court must draw all reasonable inferences in favor of the party resisting the motion. *Litz v. Robinson*, 131 Idaho 282, 283, 955 P.2d 113, 114 (Ct. App. 1998). However, "[W]hen an action will be tried before the Court without a jury, the Court is not constrained to draw inferences in favor of the party opposing a Motion for Summary Judgment but rather the Trial Court is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts." *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272 (1991); *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982); *Blackmon v. Zufelt*, 108 Idaho 469, 700 P.2d 91 (Ct. App. 1985).

ARGUMENT

There Are No Disputed Facts Which Require Reconsideration

Idaho Development fails to establish any disputed facts. The documents presented to the Court contained elements of both an equity investment and a loan by Idaho Development. The parties do not dispute the existence of the Joint Venture Agreement which establishes Teton View's need for investment capital and Idaho Development's intention to contribute that capital as an investment. The Joint Venture Agreement, dated February 28, 2008, establishes the initial intention of the parties. There is no dispute that subsequent actions by Idaho Development contained elements of a loan. On February 29, 2008, Idaho Development obtained a Promissory Note and Deed of Trust and began the process of obtaining title insurance. On March 4, 2008, escrow instructions called for regular payments and interest and handwritten notes by an unidentified individual at Alliance Title, dated March 7, 2008, establish the absence of subordination by ZBS to Idaho Development's claimed position. There is no dispute between the parties as to the existence and validity of all of these documents and of the subsequent attempts by Idaho Development to transform its initial investment equity into a secured creditor position. However, just as the Court noted, there is no clear differentiation between the money agreed to be

paid back and the money meant to serve as investment capital for the new entity. The amounts are identical, and "they are one and the same." Order on DePatco's Motion for Partial Summary Judgment, p. 13.

Because there was no dispute regarding any material fact or document presented to the Court, the District Court is entitled to draw reasonable inferences from those undisputed facts. Because this action was to be tried before the Court without a jury, the Court is not constrained to draw inferences in favor of Idaho Development, but rather the Court is free to arrive at the most probable inferences to be drawn from the uncontroverted evidentiary facts. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272 (1991). The Court correctly arrived at the most probable inferences to be drawn by the uncontroverted Joint Venture Agreement, which expressly provides in para. 2 that Idaho Development, LLC., was to contribute \$1,100,000 to the joint venture was an investment. The repayment of this investment to Idaho Development was contingent upon the funding of a subsequent construction loan. Only if the construction loan was obtained was Idaho Development to receive partial return of its investment, and only then would Idaho Development agree that the remaining investment could be subordinated to the construction loan. Only after the construction loan was obtained would Idaho Development

receive the balance of its investment under a lot release formula. Nowhere in the Joint Venture Agreement is Idaho Development's investment ever referred to as a loan. This unambiguous contract must be given its plain meaning: none of the investment was a loan. In the absence of a construction loan, it is clear that Idaho Development was not to receive the return of any portion of its investment. It is undisputed that "a construction loan was never obtained." See Plaintiff's Motion to Reconsider, p. 10. In the absence of such construction loan, no portion of Idaho Development's investment was to be returned or subordinated in any way. None of these facts are in dispute.

As the trier of fact, the Court is not required to draw inferences in favor of Idaho Development, but rather can arrive at the most probable inferences to be drawn from undisputed evidentiary facts. The \$1,100,000 investment represents both 100% of Teton View's capital and all of Idaho Development's contribution to Teton View. As noted by the Court, Idaho Development does not claim that it offered any other support or services to the business. Order on DePatco's Motion for Partial Summary Judgment, p. 14. Idaho Development has provided no new evidence to dispute this fact. Idaho Development's argument that \$850,000 in the Amended Deed of Trust dated March 7, 2008, should be viewed as the amount Idaho Development intended as a loan is

not a reasonable inference that can be drawn from the Joint Venture Agreement. The Joint Venture Agreement nowhere refers to that amount and expressly provides that no funds invested by Idaho Development were to be returned until after the funding of the construction loan. The absence of a construction loan prevents any portion of Idaho Development's investment from being viewed as a loan. The objective form of the transaction, when considered under a common sense approach, requires the finding that Idaho Development was an investor, not a creditor.

CONCLUSION

The new evidence presented by Idaho Development in the form of phone records and bank records do not raise genuine issues of material fact and are irrelevant to the initial form of the February 28, 2008 transaction. Idaho Development obtained an ownership interest in Teton View because of its investment of \$1,100,000, which was 100% of the capitalization of Teton View. Idaho Development. By the objective documentation of the February 28, 2008 transaction, Idaho Development was not entitled to return of **any** portion of its investment until after funding of the construction loan, which was never obtained. No reasonable person could draw any differing conclusion. Phone records from July, 2008 and bank records from 2008 and 2009 do not affect the nature of the investment made by Idaho Development in February, 2008 when

the Joint Venture Agreement was signed. DePatco has shown by indisputable evidence that the Promissory Note and Deed of Trust are invalid, because all of Idaho Development's contribution to Teton View was an equity investment. This Court arrived at the most probable inferences to be drawn from uncontroverted evidentiary facts and no portion of the Court's Order on DePatco's Motion for Partial Summary Judgment requires reconsideration. Plaintiff's Motion for Reconsideration should be denied.

DATED THIS 12 day of July, 2010.

FULLER & CARR



Mark R. Fuller
Attorney for DePatco, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorney listed below on this 12 day of July, 2010:

Document Served:

DEPATCO'S BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION TO RECONSIDER

Attorneys Served:

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ALAN HARRISON LAW, PLLC
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Idaho Falls, ID 83402

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Mark R. Fuller
FULLER & CARR

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IDAHO DEVELOPMENT, LLC, a Utah
limited liability company,

Plaintiff,

v.

TETON VIEW GOLF ESTATES, LLC, a
Utah limited liability company;
ROTHCHILD PROPERTIES, LLC, a
Utah limited liability company;
WESTERN EQUITY, LLC, a Utah
limited liability company; AMERITITLE
COMPANY; ZBS, LLC, an Idaho limited
liability company; DEPATCO, INC., an
Idaho corporation; SCHIESS &
ASSOCIATES, P.C., an Idaho
professional services corporation; HD
SUPPLY WATERWORKS, LTD.; DOES
1-3, and ALL PERSONS IN
POSSESSION OF REAL PROPERTY
DESCRIBED HEREIN,

Defendants.

Case No. CV-08-4395

OPINION, DECISION, AND ORDER
ON IDAHO DEVELOPMENT'S
MOTION TO RECONSIDER

10 123 30 02 34

7TH JUDICIAL DISTRICT COURT
BONNEVILLE, IDAHO

I. PROCEDURAL BACKGROUND

In its April 2, 2010 order, this court granted partial summary judgment against Idaho Development, recharacterizing its outstanding debt in Teton View Golf Estates as a capital contribution, thereby subordinating Idaho Development's claims to those of Teton View's creditors. That order contains a lengthy rendition of the factual and procedural history of this case.

On May 4, 2010, Idaho Development filed this motion to reconsider the April 2 order.

On June 3, 2010, Idaho Development appealed the April 2 order to the Idaho Supreme Court.

This motion was called up for hearing on July 19, 2010. Following argument from counsel, the court took the matter under advisement.

After considering the court's file, pleadings, depositions, admissions, affidavits, and the argument of counsel, the court renders the following opinion.

II. STANDARD ON MOTION FOR RECONSIDERATION

The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court. *Jordan v. Beeks*, 135 Idaho 586, 21 P.3d 908 (2001). See also, *Watson v. Navistar Int'l Transp. Corp.*, 121 Idaho 643, 827 P.2d 656 (1992) and *Slaathaugh v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999).

I.R.C.P. 11(a)(2)(B) provides the authority for a district court to reconsider and vacate interlocutory orders so long as final judgment has not yet been ordered. *Telford v. Mart Produce, Inc.*, 130 Idaho 932, 950 P.2d 1271 (1998). See also *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997) and *Farmers Nat'l Bank v. Shirey*, 126 Idaho 63, 68, 878 P.2d 762, 767 (1994). The Court of Appeals has held that motions brought under Rule 11(a)(2)(B) may include new evidence, but are not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100, 104 (Ct.App. 2006).

III. ANALYSIS

Idaho Development presents this court with affidavits of Melinda Boswell and David Clark to support the motion. Boswell is the manager of Idaho Development, and Clark is her friend who made phone calls on the corporation's behalf during the project.

Attached to Clark's affidavit are copies of his phone records, showing that he made phone calls to DePatco on July 30, 2008, as opposed to mid-July as he had sworn in a previous

affidavit. Attached to Boswell's affidavit are copies of bank statements and other financial records.

In reviewing the affidavits and supporting documents, this court does not find any new evidence to support the motion. The affidavit of Boswell shows that Teton View paid interest on the advance from Idaho Development. This court has always taken into consideration the ways in which Idaho Development and Teton View did treat the advance as a loan, and referred to the interest payments in its previous orders.

Idaho Development does not present a compelling legal argument that this court should reconsider its April 2, 2010 order. A re-reading of the pertinent documents, briefs, and memorandum order confirm that this case involves a complex set of facts and an unsettled area of law. However, there is no evidence to support Idaho Development's contention that \$850,000 of the \$1.1 million investment should be seen as a loan and not recharacterized as a capital contribution. Idaho Development's agreement with Teton View left it as a 1/3 shareholder and in place to reap substantial profits had the project been a success. Idaho Development was an investor in Teton View and should not be placed on equal footing with legitimate creditors.

Idaho Development again makes reference to its good faith in the project. As this court noted in its earlier order, "[r]echaracterization cases turn on whether a debt actually exists-not on whether" there was inequitable conduct. *In Re Adelphia Communications, Corp.*, 365 B.R. 24, 31-32 (Bankr. S.D.N.Y. 2007).

While this court welcomes the opportunity to correct its mistakes, Idaho Development has not presented a convincing argument that there is a mistake to correct in this case. Based on the affidavits and exhibits before the court, there was and is no question of material fact as to the issue of debt recharacterization.


Idaho Development's motion to reconsider is denied.

**IV.
CONCLUSION AND ORDER**

Idaho Development's motion to reconsider is DENIED.

IT IS SO ORDERED.

Dated this 31 day of August, 2010.



Jon J. Shindurling
District Judge

NOTICE OF ENTRY

I hereby certify that on this 30 day of August, 2010, the foregoing ORDER ON IDAHO DEVELOPMENT'S MOTION TO RECONSIDER was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

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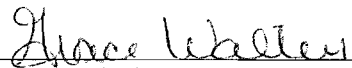
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Ronald Longmore
Clerk of the District Court
Bonneville County, Idaho

by 
Deputy Clerk

CL
BONNEVILLE COUNTY
2008
SEP 13 PM 4:11

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IDAHO DEVELOPMENT, LLC, a)
Utah limited liability company,)
)
Plaintiff/Appellant,)

Case No. CV-08-4395

vs.)

ZBS, LLC, an Idaho limited liability)
company; DEPATCO, INC., an Idaho)
Corporation; SCHIESS &)
ASSOCIATES, P.C., an Idaho)
Professional Service Corporation;)
DOES 1-3, and ALL PERSONS IN)
POSSESSION OF REAL PROPERTY)
DESCRIBED HEREIN,)

**AMENDED
NOTICE OF APPEAL**

Defendants/Respondents.)
_____)
)
)
)
)

TO: THE ABOVE NAMED RESPONDENT, ZBS, LLC AND YOUR ATTORNEY
KARL R. DECKER; DEPATCO, INC. AND YOUR ATTORNEY MARK R.
FULLER; SCHIESS & ASSOCIATES, P.C. AND YOUR ATTORNEY
JEFFREY D. BRUNSON, AND THE CLERK OF THE ABOVE ENTITLED
COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, IDAHO DEVELOPMENT, LLC (hereinafter referred to as “Idaho Development”), appeals against the above named Defendants to the Idaho Supreme Court from the Opinion, Decision, and Order on Defendant DePatco’s Motion for Partial Summary Judgment entered in the above entitled proceeding on the 2nd day of April, 2010 (“April 2 Order”); the Judgment, Decree of Foreclosure, and Order of Sale and Rule 54(b) Certificate entered in the above entitled proceeding on the 11th day of May, 2010 (“May 11 Order”); and the Judgment and Order Approving Settlement Agreement to Perform Joint Foreclosure and Certificate of Final Judgment docketed in the above entitled proceeding on May 20, 2010 (“May 20 Order”), and the Opinion, Decision, and Order on Idaho Development’s Motion to Reconsider docketed in the above entitled proceeding on August 30, 2010 (“August 30 Order”), all entered by Honorable Jon J. Shindurling presiding.

2. This appeal is taken on issues of law and fact. It is generally submitted that the issues on appeal will include:

- a. the District Court’s decision in the April 2 Order to grant DePatco’s Motion for Partial Summary Judgment and recharacterize Idaho Development’s entire advance to Teton View as a capital contribution and subordinated to the claims of Teton View’s legitimate creditors;
- b. The District Court’s decision in the May 11 Order to grant ZBS’s Motion for Summary Judgment and to find that Idaho Development did not have priority over ZBS due to ZBS agreeing to subordinate to

Idaho Development and/or to ZBS agreeing to be recorded in second position behind Idaho Development.

- c. The District Court's decision in the May 11 Order and May 20 Order granting DePatco's Motion for Joint Foreclosure by ZBS, DePatco, and Schiess and thereby ordering that Idaho Development is foreclosed of any interest, liens, or claims in the Property, save and except the statutory rights of redemption and that Idaho Development's Deed of Trust recorded February 29, 2008 as Instrument No. 1291905, as amended by that Amendment of Deed of Trust dated March 7, 2008, recorded March 10, 2008 as Instrument No. 1292697, and the Deed of Trust recorded August 25, 2008 as Instrument No. 1309847, Official Records of Bonneville County, Idaho as being avoided and ordered released of record pursuant to the April 2 Order.
- d. The granting of any interest or attorney's fees on behalf of any of the Defendant's in the above matter.
- e. The District Court's decision in the August 30 Order to deny Idaho Development's Motion for Reconsideration of the April 2 Order.

A more specific detailing of the issues on appeal will be supplied upon the briefing of this matter.

3. That Idaho Development is an aggrieved party as the result of an appealable judgment in proceedings before Honorable Jon J. Shindurling and therefore has a right to appeal to the Idaho Supreme Court.

4. The judgment and orders described in paragraph 1 above are appealable judgment and orders under and pursuant to Idaho Appellate Rule 11(a)(1), (3), and (4).

5. There is no order sealing any portion of the record.

6. The Appellant requests the preparation of the reporter's transcripts, pursuant to Idaho Appellate Rule 25, from the hearings held on February 8, 2010 (DePatco's Motion for Partial Summary Judgment) and May 4, 2010 (ZBS Motion for Summary Judgment and Motion to Approve Settlement Agreement) and July 19, 2010 (Idaho Development's Motion to Reconsider) in front of Judge Jon J. Shindurling.

7. The Appellant requests the following documents to be included in the clerk's record pursuant to Idaho Appellate Rule 28:

- a. Register of Actions
- b. July 22, 2008 - Civil Complaint filed by Plaintiff, Idaho Development
- c. January 12, 2009 - Amended Complaint filed by Idaho Development
- d. April 15, 2009 – Answer and cross claim filed by DePatco
- e. April 28, 2009 – Schiess Answer, counterclaim, cross-claim, 3rd party complaint
- f. May 5, 2009 – Schiess Answer to DePatco cross-claim
- g. May 7, 2009 – Plaintiff's Answer to DePatco's cross-claim
- h. May 18, 2009 – Plaintiff's Reply to Schiess counterclaim
- i. June 3, 2009 – DePatco Answer to Schiess cross-claim
- j. June 17, 2009 – ZBS Answer, counterclaim, cross-claim, and 3rd party complaint for judicial foreclosure
- k. June 17, 2009 – ZBS Answer to Schiess cross-claim

- l. June 17, 2009 – ZBS Answer to DePatco cross-claim
- m. June 17, 2009 – Brad Zundel and Jim Zundel Answer to 3rd-Party Complaint of Schiess
- n. July 8, 2009 – Schiess Answer to ZBS cross-claim
- o. July 8, 2009 – Plaintiff's reply to ZBS counterclaim
- p. January 5, 2010 – Affidavit of Mark Fuller
- q. January 5, 2010 – DePatco Motion for Partial Summary Judgment RE: Plaintiff's secured claim priority
- r. January 25, 2010 – Schiess response to DePatco Motion for Partial Summary Judgment
- s. January 25, 2010 – Affidavit of Plaintiff's Counsel in Support of Opposition to DePatco's Motion for Partial Summary Judgment
- t. January 25, 2010 – Plaintiff's Response to DePatco's Motion for Partial Summary Judgment
- u. January 25, 2010 – Affidavit of David Clark
- v. January 25, 2010 – Affidavit of Melinda Boswell
- w. January 26, 2010 – ZBS Response to DePatco Motion for Partial Summary Judgment
- x. January 29, 2010 – Plaintiff's response to ZBS and Schiess responses to DePatco's Motion for Partial Summary Judgment
- y. January 29, 2010 – Second Affidavit of Plaintiff's Counsel in Support of Opposition to DePatco's Motion for Partial Summary Judgment

- z. February 1, 2010 – DePatco’s reply in Support of Motion for Partial Summary Judgment
- aa. April 6, 2010 – ZBS Motion for Summary Judgment
- bb. April 6, 2010 – Memorandum in Support of ZBS Motion for Summary Judgment
- cc. April 6, 2010 – Affidavit of Steven W. Zundel in Support of ZBS Motion for Summary Judgment
- dd. April 6, 2010 – Affidavit of Jim Zundel in Support of ZBS Motion for Summary Judgment
- ee. April 20, 2010 – Motion for Judgment and Order Approving Settlement Agreement to perform Joint Foreclosure and for Certificate of Final Judgment
- ff. April 21, 2010 – Plaintiff’s response to ZBS Motion for Summary Judgment
- gg. April 21, 2010 – Affidavit of Melinda Boswell in Opposition to ZBS Summary Judgment
- hh. April 21, 2010 - Affidavit of David Clark in Opposition to ZBS Summary Judgment
- ii. April 27, 2010 – Reply Memorandum in Support of ZBS Motion for Summary Judgment
- jj. April 27, 2010 – Reply Affidavit of Jim Zundel in Support of ZBS Motion for Summary Judgment

- kk. April 30, 2010 – Plaintiff’s Opposition to Motion for Judgment and Order Approving Settlement Agreement to perform Joint Foreclosure and for Certificate of Final Judgment
- ll. May 4, 2010 – Plaintiff’s Motion to Reconsider
- mm. May 4, 2010 – Affidavit of David Clark in Support of Motion to Reconsider
- nn. May 4, 2010 – Affidavit of Melinda Boswell in Support of Motion to Reconsider
- oo. May 11, 2010 – Judgment, Decree of Foreclosure, and Order of Sale and Rule 54(b) Certificate
- pp. May 18, 2010 – DePatco Motion for Award of Attorney Fees
- qq. May 18, 2010 – DePatco Memorandum of Costs: Affidavit of Attorney
- rr. May 20, 2010 – Judgment & Order approving settlement agreement to perform Joint Foreclosure
- ss. May 20, 2010 – ZBS Memorandum of Costs and Attorney’s Fees
- tt. May 20, 2010 – ZBS Affidavit Support of Memorandum of Costs and Attorney’s Fees
- uu. May 21, 2010 – Schiess Motion for Attorney Fees and Costs
- vv. May 21, 2010 – Schiess Memorandum of Attorney Fees and Costs and Affidavit of Counsel
- ww. June 1, 2010 – Plaintiff’s Opposition to Motions for Attorney’s Fees
- xx. Notice of Appeal

yy. A court reporter's notice of lodging with the district court

zz. Table of contents and index

aaa. June 18, 2010 – Amended Judgment, Decree of Foreclosure and Order of Sale.

bbb. June 18, 2010 – Order Awarding Attorney Fees/Costs to DePatco

ccc. June 18, 2010 – Order Awarding Attorney's Fees/Costs to ZBS, LLC

ddd. June 25, 2010 – Order Awarding Schiess & Assoc. attorney fees/costs

eee. July 12, 2010 – DePatco's Brief filed in Opposition to Plaintiff's Motion for Reconsideration.

fff. August 30, 2010 – Opinion, Decision, and Order on Idaho Development's Motion to Reconsider.

8. I certify:

(a) That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Jack Fuller
Certified Court Reporter
605 N. Capital Ave
Idaho Falls, ID 83402

Nancy Marlow
Certified Court Reporter
605 N. Capital Ave
Idaho Falls, ID 83402

(b) That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the Clerk of the District Court has been paid the estimated fee for preparation of the clerk's record.

(d) That the Clerk of the District Court has been paid the appellate filing fee.

(e) That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 15th day of September, 2010.


Alan R. Harrison
Attorney for the Appellant

NOTICE OF SERVICE

I certify that on this day I served a true and correct copy of the foregoing document in accordance with Rule 5(b) of the Idaho Rules of Civil Procedure on the following by the method of service indicated:

Mark R. Fuller (DePatco)
410 Memorial Drive, Suite 201
PO Box 50935
Idaho Falls, ID 83405-0935

() Mailing, postage pre-paid
() Fax 208-524-7167
(☒) Courthouse Box
() Hand Delivery/ E-mail

Karl R. Decker (ZBS)
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405

() Mailing, postage pre-paid
() Fax 208-523-9518
(☒) Courthouse Box
() Hand Delivery/ E-mail

Jeffrey D. Brunson (Schiess)
Beard St. Clair Gaffney, PA
2105 Coronado Street
Idaho Falls, ID 83404-7495

() Mailing, postage pre-paid
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() Mailing, postage pre-paid
(☒) Courthouse Box

Dated: September/ 3 , 2010.



Alan R. Harrison

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IDAHO DEVELOPMENT, LLC, a)
Utah limited liability company,)

Plaintiff/Appellant)

v)

TETON VIEW GOLF ESTATES, LLC, a)
Utah limited liability company; AMERITITLE)
COMPANY; ZBS, LLC., an Idaho Limited)
Liability company; DEPATCO, INC., an Idaho)
Corporation; SCHIESS & ASSOCIATES,)
P.C., an Idaho professional corporation,)

Defendants-Respondents,)

and)

ROTHCHILD PROPERTIES, LLC, a Utah)
limited liability company; WESTERN)
EQUITY, LLC, a Utah limited liability)
company; HD SUPPLY WATERWORKS,)
LTD; DOES 1-3, and ALL PERSONS IN)
POSSESSION OF REAL PROPERTY)
DESCRIBED HEREIN,)

Defendants.)

AMENDED

CLERK'S CERTIFICATE OF APPEAL

Case No. CV-2008-4395

Docket # 37771

Appeal from: Seventh Judicial District, Bonneville County

Honorable Jon J. Shindurling, District Judge, presiding.

Case number from Court: CV 2008-4395

Order or Judgment appealed from: Opinion, Decision, and Order on Defendant Depatco's Motion for Partial Summary Judgment, entered 4-2-10, Judgment, Decree of Foreclosure, and Order of Sale and Rule 54(b) Certificate entered on 5-11-10, Judgment and Order Approving Settlement Agreement to Perform Joint Foreclosure and Certificate of Final Judgment, entered 5-20-10 and Opinion, Decision, and Order on Idaho Development's Motion to Reconsider, filed 8-30-10.

Attorney for Appellant:

Allan Harrison

Attorney for Respondents:

Teton View Golf Estates-Karl R. Decker
Amerititle Company-Karl R. Decker

ZBS, LLC-Karl Decker
Depatco, Inc.-Mark R. Fuller
Schiess & Associates P.C.-Jeffrey D. Brunson

Appealed by:

Idaho Development

Appealed against:

Rothchild Properties

Notice of Appeal Filed:

6-3-10

Appellate Fee Paid:

Yes

Was District Court Reporter's Transcript requested?

Yes

If so, name of reporter:

Nancy Marlow/Jack Fuller

Dated: September 14, 2010

RONALD LONGMORE
Clerk of the District Court

By: 

Deputy Clerk

